

PART 800—REGULATIONS PERTAINING TO MERGERS, ACQUISITIONS, AND TAKEOVERS BY FOREIGN PERSONS

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APPENDIX A TO PART 800—PREAMBLE TO REGULATIONS ON MERGERS, ACQUISITIONS, AND TAKEOVERS BY FOREIGN PERSONS (PUBLISHED NOVEMBER 21, 1991)

APPENDIX B TO PART 800—PREAMBLE TO REGULATIONS ON MERGERS, ACQUISITIONS, AND TAKEOVERS BY FOREIGN PERSONS (PUBLISHED MAY 25, 1994)

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SOURCE: 56 FR 58780, Nov. 21, 1991, unless otherwise noted.

Subpart A—General

§ 800.101 Scope.

The regulations in this part implement section 721 of title VII of the Defense Production Act of 1950, hereinafter referred to as “section 721” (see § 800.216 of this part). The definitions in this part are applicable to section 721 and these regulations. The principal purpose of section 721 is to authorize the President to suspend or prohibit any merger, acquisition, or takeover, by or with a foreign person, of a person engaged in interstate commerce in the United States when, in the President’s view, the foreign interest exercising control over that person might take action that threatens to impair the national security. In addition, section 721 authorizes the President to seek divestment or other appropriate relief in the case of concluded transactions.

§ 800.102 Effect on other laws.

Nothing in this part shall be construed to alter or affect any existing

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power, process, regulation, investigation, enforcement measure, or review provided by any other provision of law.

§ 800.103 Prior acquisitions.

Section 721 and the regulations in this part apply to acquisitions concluded on or after the effective date (as defined in § 800.207), including acquisitions concluded prior to issuance of these regulations. Section 721 and the regulations in this part do not apply to acquisitions concluded prior to the effective date.

§ 800.104 Transactions or devices for avoidance.

Any transaction(s) or other device(s) entered into or employed for the purpose of avoiding section 721 shall be disregarded, and section 721 and these rules shall be applied to the substance of the transaction(s).

Example. Corporation A is organized under the laws of a foreign state and is wholly owned and controlled by a foreign national. With a view towards avoiding possible application of section 721, Corporation A transfers money to a U.S. citizen, who, pursuant to informal arrangements with Corporation A and on its behalf, purchases all the shares in Corporation X, a corporation which is organized under the laws of a state of the United States, and which engages in business activities in the United States. That sham transaction is subject to section 721.

Subpart B—Definitions

§ 800.201 Acquisition.

The term *acquisition* is used in these regulations to refer collectively to an acquisition, merger, or takeover. It includes, without limitation:

- (a) The acquisition of a person by:
 - (1) The purchase of its voting securities,
 - (2) The conversion of its convertible voting securities,
 - (3) The acquisition of its convertible voting securities if that involves the acquisition of control, or
 - (4) The acquisition and the voting of proxies, if that involves the acquisition of control.
- (b) The acquisition of a business, including any acquisition of production or research and development facilities operated prior to the acquisition as

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part of a business, if there will likely be a substantial use of:

- (1) The technology of that business, excluding technical information generally accompanying the sale of equipment, or
- (2) Personnel previously employed by that business.
- (c) A consolidation.

Example (relating to paragraph (b) of this section). Corporation A, organized under the laws of a foreign state and wholly owned and controlled by a foreign national, acquires, from separate United States nationals, (a) products held in inventory, (b) land, and (c) machinery for export. Corporation A has not acquired a business and has not made an acquisition within the meaning of these regulations.

§ 800.202 Affiliate.

An *affiliate* of an entity, as that term is used in §§ 800.205 and 800.402, is any other entity in the chain of ownership between a parent and that entity.

Example. Corporation P holds 50 percent of the voting securities of Corporations R and S. Corporation R holds 40 percent of the voting securities of Corporation X, and Corporation S holds 50 percent of the voting securities of Corporation Y. Under this definition, Corporation S is an affiliate of Corporation Y. (An entity can be both an affiliate and a parent.) Corporation R is not an affiliate of Corporation S or Y because it is not in the chain of ownership between Corporation P and Corporation Y. Corporation X is also not an affiliate of Corporation Y.

§ 800.203 Committee; Chairman of the Committee.

The term *Committee* means the Committee on Foreign Investment in the United States, as established in Executive Order No. 11858, 40 FR 20263, 3 CFR, 1971–1975 Comp., p. 990, as amended. The Chairman of the Committee is the Secretary of the Treasury.

§ 800.204 Control.

(a) The term *control* means the power, direct or indirect, whether or not exercised, and whether or not exercised or exercisable through the ownership of a majority or a dominant minority of the total outstanding voting securities of an issuer, or by proxy voting, contractual arrangements or other means, to determine, direct or decide matters affecting an entity; in particular, but